

## REMARKS

Claims 1 – 36 in the present application have been indicated as allowable. In the outstanding Office Action the Examiner indicated that prosecution on the merits is closed in accordance with the practice under *Ex Parte Quayle*. The Examiner objected to informalities in claims 1-14, 16-20 and 22-29.

By this Response claims 1-3, 5-6, 8-10, 12-13, 15-17, 19-20, 22-24, 26-27, 29-31 and 33-35 have been amended in response to the Examiner's objections. The amendments to these claims find support in the original specification, *inter alia* at page 37, line 2 - page 38, line 15. It is respectfully submitted that the above amendments introduce no new matter within the meaning of 35 U.S.C. § 132.

### Objections to the Claims

The Examiner objected to claims 1-14, 16-20 and 22-29.

### Response

By this Response and Amendment, the claims have been amended as suggested by the Examiner. The above amendments are believed to overcome the objections to claims 1-6, 8-14, 16-20 and 22-29. The objection to claim 7 is addressed below.

Regarding claim 7, the Office Action stated that the modulation device in claim 1 (from which claim 7 depends) does not provide any structures or sources to perform the encoding of the code word sequence, and that it is unclear what records the encoded code word sequence on the recording medium. It is acknowledged that the modulation device does not include a recording means; however the claim is directed to the recording medium in the sense of a storage medium, having a particular set of code words encoded thereon. The actual recorder (e.g., CD ROM burner or duplication machine) is not an element of the claim. It is therefore submitted that this is a proper format for a claim and clearly sets forth the metes and bounds of the invention. *In re Beauregard*, 53 F.3d 1583 (Fed. Cir. 1995). The recording medium meets the examination criteria of MPEP §2106, and provides a concrete and tangible result, also under the criteria of

MPEP §2106. It is further noted that claim 7 meets the Infringement Test for dependent claims, as set forth in MPEP §608.01(n) III. Permissible formats for dependent claims even extends to dependent form mixed statutory class claims, so long as the Infringement Test for dependent claims is met, as set forth in MPEP §608.01(n) III, last paragraph.

In the present case, claim 7 requires a recording medium (described in claim 7) with a particular code sequence (described in claim 1), thus meeting the Infringement Test for a dependent claim.

Accordingly, Applicants respectfully request that the Examiner remove the objections to the claims and pass this application to allowance.

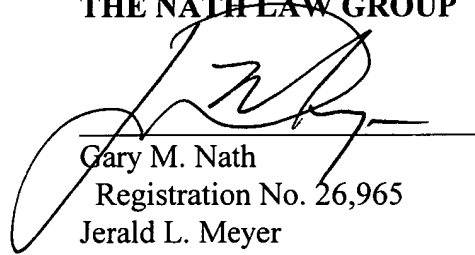
### CONCLUSION

In light of the foregoing, Applicants submit that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner call the undersigned.

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Respectfully submitted,  
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